

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

<p>FREDERICK GATLIN, Petitioner, v. JAMES TILTON, Respondent.</p> <hr style="width: 40%; margin-left: 0;"/>	<p>) No. C 07-3696 CW (PR))) ORDER REVIEWING COMPLETE MEDICAL) RECORD; FINDING NO EVIDENTIARY) HEARING WARRANTED; DENYING) RESPONDENT'S MOTION TO DISMISS;) AND SETTING BRIEFING SCHEDULE)))</p>
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INTRODUCTION

Petitioner Frederick Gatlin, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Respondent filed a motion to dismiss, claiming that Petitioner had failed to file his petition within the statute of limitations. Petitioner responded by arguing that he was entitled to equitable tolling from 2001 through 2006 because his mental and physical illness during that five-year period prevented him from filing a timely petition.

On July 16, 2008, after reviewing the evidence and determining that Petitioner did not show an extraordinary circumstance meriting equitable tolling, the Court granted Respondent's motion to dismiss the petition as untimely.

Petitioner timely appealed and, on May 6, 2010, the Ninth Circuit issued an Order vacating the Court's July 16, 2008 Order and remanding for further proceedings. The Ninth Circuit ruled that the medical records Petitioner submitted made a colorable showing that he suffered from a serious mental illness for at least a substantial portion of the five-year period at issue.

1 However, the court noted that, because Petitioner proceeded pro
2 se, the record contained only intermittent medical records making
3 it difficult to gain a complete understanding of his mental
4 health. The Ninth Circuit ordered that this Court examine
5 Petitioner's entire medical record during the relevant five-year
6 period to determine the extent of his mental capacity. It held
7 that if the records suggest that Petitioner's mental illness
8 "affected his ability to file a habeas petition during the entire
9 relevant period of his incarceration, an evidentiary hearing would
10 be warranted." (May 6, 2010 Ninth Circuit Order at 3.)

11 On May 28, 2010, the Ninth Circuit issued its mandate.

12 In an Order dated June 11, 2010, the Court directed
13 Respondent to lodge with the Court the entirety of Petitioner's
14 prison medical records.

15 On June 14, 2010, Respondent submitted Petitioner's medical
16 records for the Court's review.

17 The Court reviewed Petitioner's mental health but also his
18 physical health during the five-year period because:

19 (1) Petitioner claims both circumstances prevented him from filing
20 his habeas petition at different intervals during the relevant
21 five-year period; (2) Petitioner's complete medical record
22 contains information relevant to both his mental and physical
23 ability to diligently pursue his claims; and (3) as described
24 below, his mental and physical problems are interrelated and their
25 effects on his ability to file a habeas petition are inseparable.

26 Having considered the complete medical record, the Court
27 finds an evidentiary hearing is not necessary because the record
28

1 is now sufficiently developed to show that Petitioner is entitled
2 to equitable tolling during the relevant five-year period.

3 Because the Ninth Circuit has vacated the Court's July 16, 2008
4 Order, the Court now DENIES Respondent's motion to dismiss.

5 DISCUSSION

6 I. Background

7 In its July 16, 2008 Order, the Court found that the petition
8 was untimely unless Petitioner could show that he was entitled to
9 tolling, stating:

10 In the present case, the judgment became final for
11 purposes of the statute of limitations on January 19,
12 2001 because Petitioner did not file a petition for a
writ of certiorari in the United States Supreme Court
within ninety days.

13 Accordingly, Petitioner was required to file a
14 federal habeas corpus petition no later than January
15 18, 2002. Because he did not file the present petition
16 until July 18, 2007 -- more than five years after the
limitations period had expired -- the petition is
untimely unless he can show that he is entitled to
statutory or equitable tolling.

17 (July 16, 2008 Order at 3-4.)

18 The Court found that Petitioner was not entitled to statutory
19 tolling of the limitations period because the state petition filed
20 on September 28, 2006 did not revive a limitations period that had
21 already expired on January 18, 2002. (Id. at 5 (citing Ferguson
22 v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003)).)

23 The Court then turned to Petitioner's claim for equitable
24 tolling and analyzed it based on the limited medical record he
25 submitted:

26 Petitioner's first argument for equitable tolling
27 is based on his mental illness. He contends that,
28 after he was sentenced and incarcerated, his
psychological condition became much worse than it had

1 been and prevented him from filing a habeas corpus
2 petition.

3 He also claims that "from 2001 until 2004, he was
4 under numerous psychotropic medications . . . due to
5 his suffering from hallucinations and delusions that
6 affected his ability to sleep, eat and/or rational
7 thought patterns." He suggests that these "numerous
8 psychotropic medications" also contributed to his
9 inability to file his petition.

10 In 2004, Petitioner's psychotropic medication was
11 discontinued for eight weeks so that he could be
12 treated for Hepatitis C. He argues that the residual
13 effects of his psychological medication, coupled with
14 the new hepatitis medication, "could have" resulted in
15 the onset of "serious medical problems . . . which
16 effectively hindered and/or prohibited his ability [to]
17 acknowledge and understand his legal obligations
18 pursuant to the AEDPA" from 2004 through 2006.

19 In sum, Petitioner claims he is entitled to
20 equitable tolling because he suffered from mental
21 illnesses, medication-related impairments, and physical
22 ailments during the time period in which he should have
23 filed his state and then federal habeas petitions from
24 January 19, 2001 to September 28, 2006.

25 (July 16, 2008 Order at 8-9 (citations omitted).)

26 II. Equitable Tolling Analysis Based on Limited Medical Record

27 The Court determined, based on the limited record, that
28 Petitioner's claims were insufficient to establish an
extraordinary circumstance entitling him to equitable tolling.
First, it noted that most mental illness is treatable, allowing
sufferers to manage their own affairs. (*Id.* at 9.) It also
quoted the psychiatric evaluation performed prior to completion of
Petitioner's trial, which concluded that he "has a relatively
sustained psychotic thought process, but it does not manifest
itself in florid and sustained auditory hallucinations or
delusions." (*Id.* at 10.) The Court found that, although
Petitioner was periodically given a single cell because of his

1 psychiatric instability, the medical records presented stated that
2 in June, 2002 he was having "not much problem psychiatrically" and
3 in March, 2003 he was "rational and coherent." (Id. at 10-11.)
4 This evidence rebutted Petitioner's claim that his condition had
5 worsened after his psychiatric evaluation for trial and prevented
6 him from filing his habeas petition from 2001 to 2004.

7 The Court also noted that, according to some medical reports
8 on record, there were periods where he was not taking prescribed
9 medication, even though the same reports affirmed that there was
10 "NO evidence of any side effects" from his medication. (Id. at
11 11-12 (quoting Pet'r Opp'n, Ex. B).) On these facts, the Court
12 found that it was illogical to suggest that Petitioner's
13 medication prevented him from filing his petition. (Id. at 12.)

14 Similarly, the Court was unpersuaded by the evidence
15 Petitioner offered to support his claim that he was unable to file
16 his petition between 2004 and 2006 because of his physical
17 ailments. These medical problems included chest pain, heart
18 problems, swelling of his hands and fingers, chronic liver
19 disease, obesity, gastrointestinal bleeding, and general weakness.
20 (Id. at 13.) The medical records provided by Petitioner suggested
21 that his medical issues could have been the result of his weight
22 and diet. (Id.) The Court concluded that Petitioner had not
23 shown how his physical problems had prevented him pursuing his
24 claims.

25 Finally, the Court observed that Petitioner had "failed to
26 provide any evidence detailing how or at what point his condition
27 improved" to explain why he was now able to pursue his habeas
28 claims diligently. (Id. at 12.) Therefore, the Court found

1 unavailing Petitioner's arguments for equitable tolling based upon
2 his mental illness, the effects of his psychotropic medication,
3 and his physical ailments.

4 In its May 6, 2010 Order, the Ninth Circuit cited Laws v.
5 Lamarque, 351 F.3d 919, 922-24 (9th Cir. 2003), and stated that,
6 in the present case, Petitioner "was required to make an initial
7 showing that he suffered from a mental illness severe enough to
8 warrant equitable tolling." (May 6, 2010 Ninth Circuit Order at
9 2.) According to Laws, a district court must take care not to
10 deny a motion for equitable tolling before a sufficient record can
11 be developed. See 351 F.3d at 924. The court may only dismiss a
12 claim if there is a sufficiently developed record containing
13 "countervailing evidence" that rebuts a petitioner's claim. Id.
14 Here, although some evidence submitted by Petitioner countered his
15 claims of equitable tolling, the record was incomplete.
16 Therefore, as mentioned above, the Ninth Circuit remanded the case
17 to allow this Court to review the complete medical record and to
18 determine if an evidentiary hearing is warranted. (May 6, 2010
19 Ninth Circuit Order at 2-3.)

20 III. Equitable Tolling Analysis Based on the Complete Medical
21 Record

22 The complete medical record shows that Petitioner had
23 hallucinations and delusions throughout the period between 2001
24 and 2005. The psychotropic medications he was prescribed did not
25 appear either to control these psychiatric symptoms or to
26 exacerbate them. The 2001 Mental Health History and Evaluation
27 indicates that Petitioner was delusional, "religiously
28 preoccupied" and experiencing visual hallucinations. (Pet'r

1 Medical R. (PMR) 3 of 5, Mental Health History and Evaluation Apr.
2 17, 2001 at 2-3.) The February, 2002 psychological evaluation
3 assessed Petitioner as "psychotic" and ordered both an increase in
4 his medication and placement into a single cell. (PMR 5 of 5,
5 Progress Note (Prog. Note) Feb. 26, 2002 at 2-3.) Although the
6 June, 2002 progress notes stated that Petitioner was having "not
7 much problem psychiatrically," they also stated that his visual
8 hallucinations continued. (PMR 5 of 5, Prog. Notes June 5, 2002,
9 June 25, 2002.) The July 9, 2002 progress note reported that
10 Petitioner described these visions as "angels and demons; bunch of
11 shadow people on the wall dancing and having sex." (PMR 5 of 5,
12 Prog. Note July 9, 2002.) He was again placed into a single cell
13 in October, 2002. (Pet'r Opp'n, Ex. B at 7.)

14 Despite periods where Petitioner refused to take his
15 medication because of the medical side effects -- "urinating on
16 self and swelling" -- the 2002 progress notes described him as "a
17 full program participant" in the prison outpatient mental health
18 care system. (PMR 4 of 5, Prog. Note Nov. 26, 2002; PMR 5 of 5,
19 Prog. Notes May 13, 2002, June 18, 2002, June 25, 2002.) The
20 hallucinations persisted whether "on meds or off of them." (PMR 5
21 of 5, Prog. Note June 25, 2002.) Petitioner's progress notes in
22 January, 2003 stated that his condition "remained the same," his
23 psychiatric symptoms were "ongoing" and he continued to believe
24 that he was a "deity." (PMR 4 of 5, Prog. Notes Jan. 7, 2003,
25 Jan. 15, 2003, Jan. 28, 2003.)

26 In March, 2003, Petitioner was allowed to have a cell mate
27 again and denied experiencing "any current issues," though he
28 still reported some "visions." (PMR 4 of 5, Prog. Notes Mar. 4,

1 2003, Mar. 19, 2003, Mar. 25, 2003.) He was transferred from the
2 Enhanced Outpatient Program (EOP), the most intensive level of
3 care in the prison outpatient mental health care system, onto the
4 Clinical Case Management System (CCCMS), a reduced level of care.
5 (PMR 4 of 5, Prog. Note Mar. 21, 2003.) However a July, 2003
6 progress note reported that Petitioner was having visions of
7 demons. (PMR 4 of 5, Prog. Note July 21, 2003.) He reported
8 having similar visions in the November, 2003 and December, 2003
9 progress notes and in his 2004 Mental Health Evaluation and
10 Treatment Plan. (PMR 4 of 5, Prog. Notes Nov. 14, 2003, Dec. 15,
11 2003; Mental Health Evaluation and Treatment Plan (MHETP), Apr.
12 15, 2004 at 3.) In November, 2004, Petitioner was again placed on
13 EOP because "he was not doing well on CCCMS." (PMR 4 of 5, Prog.
14 Note Nov. 30, 2004.) He remained on EOP and continued to have
15 delusions and hallucinations through June, 2005. (PMR 4 of 5,
16 MHETPs Feb. 15, 2005, May 10, 2005; Prog. Note June 13, 2005.)

17 Petitioner's progress note from June 9, 2005 states that he
18 was "stable on no psych. med." (PMR 4 of 5, Prog. Note June 9,
19 2005.) However, the complete medical record shows that
20 Petitioner's physical ailments limited the treatment of his mental
21 illness and directly affected his ability to file a habeas
22 petition from 2005 to 2006. An August, 2005 progress note
23 concludes that "File documentation confirms that I/P has erosion
24 of the GI track [sic], lending support to I/P's decision to not
25 receive psych. medication." (PMR 4 of 5, Prog. Note Aug. 3, 2005
26 (emphasis in original).) Petitioner had previously reported
27 coughing up blood. (Pet'r Opp'n, Ex. D at 11.) In 2005, after a
28

1 liver biopsy, medical staff treated Petitioner's hepatitis C
2 infection with interferon. (PMR 3 of 5, Health Record Report,
3 Jan. 3, 2005; PMR 4 of 5, Prog. Notes Dec. 2, 2004, Mar. 14, 2005,
4 Aug. 2, 2005.) Petitioner's interferon treatment began in June,
5 2005.¹ (PMR 4 of 5, Prog. Note June 13, 2005.) Initially his
6 hallucinations decreased, but the interferon treatment eventually
7 led to depression -- a known side effect -- and was discontinued
8 by the end of September, 2005 due to medical complications. (PMR
9 4 of 5, Prog. Notes July 5, 2005, July, 13, 2005, Sept. 7, 2005;
10 MHETP Aug. 8, 2005.) Because the interferon treatment caused
11 severe nausea and vomiting, he was placed on a full liquid diet
12 for nine months from July, 2005 until April, 2006.² (PMR 3 of 5,
13 CMF Outpatient Dietary Referral Forms July 5, 2005, Oct. 31,
14 2005.) Petitioner's medical reports indicate that during this
15 period he was "very weak . . . possibly anemic and dehydrated" and
16 had chronic liver disease and seizures. (Pet'r Opp'n, Ex. D at
17 13; PMR 4 of 5, Prog. Note Dec. 30, 2005.) Petitioner's
18 depression, in conjunction with his rheumatoid arthritis and heart
19

20
21 ¹ Petitioner mistakenly claimed in his opposition to the
22 motion to dismiss that he received interferon in 2004. His
complete medical records show that the treatment occurred in 2005.

23 ² Petitioner's medical records contain a note that a member of
24 the medical staff did not believe Petitioner should remain on a
full liquid diet after November 1, 2005. (PMR 3 of 5, CMF
25 Outpatient Dietary Referral Form Oct. 31, 2005.) But there is no
record that a normal diet was prescribed at that time; therefore,
26 the Court assumes that Petitioner remained on a full liquid diet
until the medical order expired on April 30, 2006. Even if
27 Petitioner had resumed a normal diet and this change in diet was
sufficient evidence of his physical well-being to preclude
28 equitable tolling for the period after November 1, 2005, his
petition would still be timely, as calculated below.

1 problems may also have led to his fatigue and weakness. (PMR 4 of
2 5, Prog. Note June 23, 2006.) While there is no evidence to
3 support Petitioner's claim that psychotropic medications
4 contributed to his physical ailments, it is clear that the
5 severity of his medical problems during this time period would
6 impose a grave difficulty on a prisoner attempting to file a
7 habeas petition.

8 It was not until June 16, 2006 that a medical report
9 classified Petitioner as "clinically stable." (PMR 3 of 5,
10 Physician Request for Services June 16, 2006.) Despite some
11 lingering mental and physical issues, Petitioner was able to file
12 his state habeas petition about three months later, on September
13 28, 2006. The medical records show that discontinuation of
14 interferon treatment and amelioration of its effects reversed the
15 extraordinary circumstances that had previously prevented him from
16 diligently pursuing his claim.

17 After carefully reviewing Petitioner's complete medical
18 record as summarized above, the Court finds that an evidentiary
19 hearing is not necessary. In Laws, the record contained no
20 medical reports from the period during which the petitioner
21 claimed to be incompetent. See 351 F.3d at 923. Here, the record
22 is sufficiently developed for consideration because it now
23 includes Petitioner's complete medical record. Petitioner
24 suffered severe mental illness, that could not be controlled with
25 treatment from 2001 to 2005, and acute, incapacitating physical
26 ailments from 2005 to 2006. These conditions are extraordinary
27 circumstances beyond Petitioner's control which justify equitable
28 tolling. See Calderon v. United States District Court (Beeler),

1 128 F.3d 1283, 1288 (9th Cir. 1997) (citation and internal
2 quotation marks omitted) (extensions of time should be granted
3 only if "'extraordinary circumstances' beyond [a] prisoner's
4 control make it impossible to file a petition on time"). Even if
5 Petitioner had periods of lucidity intermingled with his
6 hallucinations and the fatigue and pain induced by his
7 debilitating physical conditions, the Court cannot identify such
8 intervals that, when pieced together, could amount to a year in
9 which he was able to pursue his habeas petition diligently.
10 Petitioner shows grave difficulty that merges literally into
11 impossibility. See Lott v. Mueller, 304 F.3d 918, 920 (9th Cir.
12 2002) ("the issue of when grave difficulty merges literally into
13 'impossibility' should be resolved in [a petitioner's] favor").
14 Accordingly, Petitioner is entitled to equitable tolling during
15 the time period the complete medical record shows he suffered from
16 mental and physical illness from 2001 through 2006 because these
17 extraordinary circumstances made it impossible for him to file a
18 timely petition.

19 In sum, the limitations period started to run on January 19,
20 2001. As mentioned above, the limitations period is equitably
21 tolled from January 19, 2001 through June 16, 2006 during the time
22 Plaintiff suffered from mental and physical illness. The
23 limitations period ran for 103 days, from June 17, 2006 through
24 September 28, 2006, when Petitioner filed his state habeas
25 petition. Petitioner is entitled to statutory tolling during the
26 entire time his collateral review was pending in state court --
27 from September 28, 2006 through June 20, 2007. See Carey v.
28 Saffold, 536 U.S. 214, 223 (2002) (The limitations period is also

1 tolled during the time between a lower state court's decision and
2 the filing of a notice of appeal to a higher state court.). The
3 limitations period began to run again between the California
4 Supreme Court's denial of his petition on June 21, 2007 and the
5 filing of his federal habeas petition on July 19, 2007 (28 days).
6 Because a total of only 131 days (103 days plus 28 days) of the
7 limitations period elapsed, the present petition is timely filed.³

8 CONCLUSION

9 For the foregoing reasons,

10 1. Upon reviewing Petitioner's complete medical record, the
11 Court finds an evidentiary hearing is not necessary because the
12 record is sufficiently developed to show that Petitioner is
13 entitled to equitable tolling during the relevant five-year period
14 he suffered from mental and physical illness.

15 2. Because the Ninth Circuit has vacated the Court's July
16 16, 2008 Order Granting Respondent's Motion to Dismiss, the Court
17 now DENIES the motion to dismiss the petition as untimely and
18 directs the parties to abide by the following briefing schedule:

19 a. Within sixty (60) days of the date of this Order,
20 Respondent shall file an Answer showing cause why a writ of habeas
21 corpus should not be issued. Respondent shall file with the
22 Answer a copy of all state records that have been transcribed

23 _____
24 ³ As mentioned in footnote two above, if Petitioner were not
25 entitled to equitable tolling for the period after November 1, 2005
26 (when he may have resumed his normal diet), then the limitations
27 period would have run from November 2, 2005 until September 28,
28 2006 (330 days). It would have also been statutorily tolled while
he pursued his state court remedies and then it would have run
again from June 21, 2007 through July 19, 2007 (28 days). Only 358
(330 days plus 28 days) of the limitations period would have
elapsed when Petitioner filed his federal petition; therefore, it
would have still been timely filed.

1 previously and that are relevant to a determination of the issues
2 presented by the petition.

3 b. If Petitioner wishes to respond to the Answer, he
4 shall do so by filing a Traverse with the Court and serving it
5 upon Respondent within thirty (30) days of his receipt of the
6 Answer. Should Petitioner fail to do so, the petition will be
7 deemed submitted and ready for decision thirty (30) days after the
8 date Petitioner is served with Respondent's Answer.

9 3. It is Petitioner's responsibility to prosecute this
10 case. Petitioner must keep the Court and Respondent informed of
11 any change of address and must comply with the Court's orders in a
12 timely fashion. Failure to do so may result in the dismissal of
13 this action for failure to prosecute pursuant to Federal Rule of
14 Civil Procedure 41(b).


15 4. Extensions of time are not favored, though reasonable
16 extensions will be granted. Any motion for an extension of time
17 must be filed no later than ten (10) days prior to the deadline
18 sought to be extended.

19 5. This Order terminates Docket no. 6.

20 6. The Clerk shall send a copy of this Order to the Ninth
21 Circuit.

22 IT IS SO ORDERED.

23 DATED: 9/22/2010



24 CLAUDIA WILKEN
25 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FREDERICK GATLIN,
Plaintiff,

Case Number: CV07-03696 CW

v.

CERTIFICATE OF SERVICE

JAMES TILTON et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 22, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Frederick Gatlin P-19908
California Medical Facility
P-141-L
P.O. Box 2000
Vacaville, CA 95696-2000

Dated: September 22, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California